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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INTERNATIONAL PAPER COMPANY,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 78-37

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of four administrative orders by respondent, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, at a formal hearing on May 18, 1978 in Lacey, Washington. David Akana presided.

Appellant was represented by its attorney, Charles R. Blumenfeld; respondent was represented by its attorney, James D. Ladley.

Appellant withdrew its appeal as to Administrative Order 78-298 relating to its cyclone C-12 at the outset of the hearing. The hearing on the three remaining orders, relating to certain wood waste boilers,

1 thereafter proceeded.

2 Having heard the testimony, having examined the exhibits, and
3 being fully advised, the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I which is noticed.

8 II

9 Appellant owns and operates certain wood waste boilers at its
10 facilities in Longview, Cowlitz County, and in Chelatchie Prairie,
11 Clark County. Both locations are within the geographic jurisdiction
12 of respondent.

13 III

14 Each of appellant's boilers, being the eastern wood waste boiler
15 at Chelatchie (Order 78-295), the western wood waste boiler at Chelatchie
16 (Order 78-296), and a wood waste boiler in Longview (Order 78-297), are
17 existing air contaminant sources. Each of the above sources, as
18 presently constituted, cannot be operated in continuous compliance with
19 the standards established by chapter 173-400 WAC.

20 IV

21 In November of 1977, appellant initially sought to enter into
22 compliance schedules or consent orders regarding some of its equipment
23 with respondent. Thereafter, proposed time tables were submitted which
24 would bring the pertinent equipment into compliance in late 1979 or
25 early 1980. Because of recently passed Federal Clean Air Act Amendments
26 however, appellant revised its proposed time tables to achieve complian

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 on or before July 1, 1979. Respondent thereafter, on January 6, 1978,
2 issued three administrative orders which required immediate abatement of
3 emissions to meet the applicable standards, immediate evaluation of
4 pollution control alternatives, submission of a Notice of Construction
5 prior to May 31, 1978, ordering of approved equipment prior to July 1,
6 1978, and start-up prior to December 31, 1978. No provisions for
7 protection from imposition of civil penalties during the compliance
8 period was made. Appellant appeals each order.

9 V

10 Appellant estimates that it will require eight months, including a
11 two-month period for its three-phase study, to complete work at its
12 Chelatchie facility. It also estimates that it will receive equipment
13 two months after placing an order.

14 Appellant estimates that it will need nine and one-half months,
15 including a two-month period for its three-phase study, to complete work
16 at its Longview facility. It also estimates that it will receive equip-
17 ment five months after placing an order.

18 Respondent is of the opinion that six months is a more reasonable
19 time from placing an order to receipt of equipment, but chose to use
20 appellant's time frame. Appellant was allowed a seven months period
21 from submission of its notice of construction to achieve actual
22 operation of its facilities on December 31, 1978. The administrative
23 orders were entered on January 6, 1978.

24 VI

25 Appellant is presently having a study made to explore alternative
26 strategies to meet air pollution emission standards. Basically, the study

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 is being conducted in three phases. The first phase involves the study
2 of methods to improve the operation of the boilers using the present
3 equipment and control system. If the first phase will not enable
4 appellant to meet emission standards, the second phase of the study
5 will be commenced and will examine modest capital expenditures in
6 the area of improving fuel combustion, such as overfire air improvements,
7 fuel feeding improvements, fuel blending, excess air control and
8 cinder rejection, and alterations to the veneer dryer system. If
9 the second phase will also not enable it to meet standards, the
10 third phase of the study will be undertaken to consider major capital
11 expenditures for air pollution equipment. The third phase requires
12 about one month to complete. The total cost of the study will not
13 exceed \$19,000. All modifications proposed or being considered
14 would reduce the emission of air contaminants. It is not contended
15 that any modification, which is intended to bring all pertinent
16 equipment into compliance with emission standards, would not have
17 a significant effect on the emission of air contaminants. Appellant
18 is committed to making modifications to its sources to bring them
19 into compliance with emission standards.

20 VII

21 Respondent's administrative orders would require appellant
22 to use a level of technology (or an equivalent process change) equal
23 to or better than fabric filters or high energy scrubbers on wood
24 waste boilers. This technology is illustrative of respondent's
25 requirement for meeting advances in the state of the art of air
26 pollution control for the kind and amount of air contaminant emitted

1 by the boilers. Respondent's order would require appellant to advance
2 directly to phase three of its study. (See Finding of Fact VI)

3 VIII

4 Respondent uniformly applies its regulation throughout its
5 jurisdiction.

6 IX

7 Any Conclusion of Law which should be deemed a Finding of Fact
8 is hereby adopted as such.

9 From these Findings the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 Appellant contends that the sources at issue are not new sources
13 under state law, and that therefore the sources must only achieve
14 emission standards for existing sources rather than meet emission
15 control requirements which mandate installation of equipment evidencing
16 advances in the state of the art. Appellant also contends that
17 respondent's schedule of compliance is impracticable and that respondent
18 has authority to waive the imposition of penalties for a source
19 which is under a compliance schedule. These are the only issues
20 submitted for decision.

21 II

22 Initially, we are asked to determine whether respondent's definition
23 of new source in Section 3.01 of Regulation I is outside the statutory
24 and regulatory framework of the State Clean Air Act. Section 3.01(a)
25 of Regulation I provides in part:

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 ". . . for the purposes of this Article, alterations
2 which will have significant effect on the emission of air
3 contaminants, shall be construed as construction or
4 installation or establishment of a new contaminant source."

5 Thus, the regulation makes alterations having a significant effect
6 on emissions a new source. The determination that a source is "new"
7 brings into consideration the requirements that the equipment evidences
8 advances in the art of air pollution control equipment:

9 "No person shall construct, install or establish a new
10 air contaminant source . . . without first filing with the
11 Authority a 'Notice of Construction and Application for
12 Approval'" (Emphasis added) Section 3.01(a).

13 "No approval will be issued unless the information
14 supplied . . . evidences to the Board or the Control
15 Officer that:

16 "(1) The equipment is designed and will be installed
17 to operate without causing a violation of the
18 emission standards.

19 "(2) The equipment incorporates advances in the art
20 of air pollution control developed for the kind
21 and amount of air contaminant emitted by the
22 equipment. . . ." (Emphasis added) Section
23 3.03(b).

24 To avoid the application of Section 3.03(b), the air contaminant source
25 must not be a "new" source. The State Clean Air Act provides in part that

26 "For the purposes of this chapter, addition to or enlarge-
27 ment or replacement of an air contaminant source, or any
28 major alteration therein, shall be construed as construction
29 or installation or establishment of a new air contaminant
30 source. . . ." (Emphasis added) RCW 70.94.152(2).

31 The term "major alteration" is ambiguous. The state agency responsible
32 for formulating minimum statewide requirements (RCW 70.94.305,
33 70.94.331), the Department of Ecology, has interpreted the term
34 "major alteration" as an alteration which increases emissions:

35 FINAL FINDINGS OF FACT,
36 CONCLUSIONS OF LAW AND ORDER

1 "The addition to or enlargement or replacement of or
2 major alteration in any stationary source already existing
3 which may increase the emission of any air pollutant . . .
shall be construed as the construction, installation or
establishment of a new source. . . .

4 "A change in process, process materials or type of
5 fuels which may result in increased emissions of an air
6 contaminant are considered to be major alterations and
require the filing of a Notice of Construction." (Emphasis
added) WAC 173-400-110(3)(b) and (c).

7 Interestingly, respondent's regulation treats the words "addition to or
8 enlargement or replacement of" or "any major alteration" inclusively
9 as an "alteration." Compare RCW 70.94.152(2) and WAC 173-400-110 with
10 Section 3.03(a).¹

11 Even if respondent's definition of new sources is inclusive and more
12 stringent than the state regulation, WAC 173-400-110, it is not thereby
13 contrary to law. Respondent may adopt regulations implementing the
14 State Clean Air Act. RCW 70.94.141. Those regulations must not be
15 less stringent than statewide regulations. RCW 70.94.331; 70.94.380.
16 See WAC 173-400-020. Further, an authority may adopt more stringent
17 emission control requirements:

18 "Nothing in this chapter shall be construed to prevent a
19

20 1. Another major regional air authority, Puget Sound Air Pollution
21 Control Agency (PSAPCA), makes "alterations" a new air contaminant source:

22 "For purposes of this Article, alterations shall be construed
23 as construction, installation or establishment of a new air
contaminant source." Section 6.03 of PSAPCA Regulation 1.

24 In Cherithon Corp. v. Puget Sound Air Pollution Control Agency, PCHB
25 No. 1109, new equipment added to reduce air contaminant emissions never-
26 theless required the filing and approval of a notice of construction. In
the instant case, respondent's regulation requires, in addition to an
"alteration," that there be a significant effect on air contaminant
emissions from the alteration.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 local or regional air pollution control district or authority
2 from adopting and enforcing more stringent emission control
3 requirements than those adopted by the state board"
(Emphasis added) RCW 70.94.380.

4 Thus, respondent's interpretation of the State Clean Air Act should be
5 given no less deference, and perhaps more, than the Department of
6 Ecology in the construction of the Act. Weyerhaeuser v. Department of
7 Ecology, 86 Wn.2d 310 (1976). However, neither agency's view appears
8 inconsistent with the Act.

9 Furthermore, respondent's Section 3.03(a) giving new source status
10 to altered equipment where there is any significant change in emissions,
11 either more or less, is not contrary to the purposes of the State Clean
12 Air Act. Although it is contended that such a policy discourages incre-
13 mental reduction of emissions by requiring "state of the art" equipment,
14 it may also be that the regulations provide for attrition of some existi
15 sources through this process. In any event, we should not invalidate th
16 rule even if we believed it unwise. Weyerhaeuser v. Department of Ecolo
17 supra at 314.

18 We conclude that respondent's Regulation I, Section 3.03(a) is
19 not outside the statutory and regulatory framework of the Act.

20 III

21 Adjustments considered under phase one of appellant's study are not
22 an "alteration" and are not a new contaminant source within the meaning
23 of Section 3.03(a). Thus, if appellant can meet emission standards by
24 effecting better operation, it is not required to add pollution control
25 equipment as set forth in the administrative orders.

26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 IV

2 Modifications considered under phases two and three of appellant's
3 study involve "alterations" to the existing equipment and are new air
4 contaminant sources within the meaning of Section 3.03(a). Accordingly,
5 under the issues submitted, the administrative orders should be affirmed
6 in this regard.

7 V

8 With respect to the Chelatchie facility, we conclude that the eight-
9 month period for compliance requested by appellant is more reasonable in
10 light of the circumstances than that allowed by respondent to install
11 appropriate air pollution control equipment.

12 With respect to the Longview facility, we conclude that the nine
13 and one-half month period for compliance requested by appellant to
14 install the necessary equipment is more reasonable in light of the
15 circumstances than that allowed by respondent.

16 Accordingly, the matter should be remanded to respondent to formulate
17 a new compliance schedule which will not exceed the above time periods
18 and which will commence as soon hereafter as is practical.

19 VI

20 Although respondent has waived civil penalties under other
21 circumstances there is no requirement that it must do so in these
22 matters. We do note, however, that the purpose of civil penalties is to
23 secure compliance with the policies of the State Clean Air Act, and a
24 person's good faith efforts to meet and to achieve such purpose would be
25 considered in any case involving a civil penalty.

26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Conclusions the Board enters this

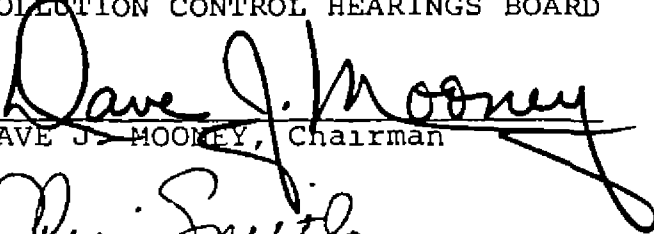
ORDER

1. Each administrative order with respect to adjustments to the operation of existing equipment (Conclusion of Law III) is vacated.

2. Each administrative order is affirmed in all other respects, provided however, that the matters are remanded to respondent to formulate new compliance schedules in accordance with Conclusion of Law V.

DONE this 27th day of June, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER